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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 GOVERNMENT OF THE UNITED
STATES VIRGIN ISLANDS
Plaintiffs

4 v.
JPMORGAN CHASE BANK N.A., et
al,

22 Civ. 10904 (JSR)

Defendants

6 -----x

7 ORAL ARGUMENT
New York, N.Y.

9 August 31, 2023

10 4:00 p.m.

11 Before:

12 HON. JED S. RAKOFF

13 District Judge

14 APPEARANCES

15 OFFICE OF THE ATTORNEY GENERAL
Attorneys for Plaintiff USVI

16 MIMI LIU
DAVID I. ACKERMAN
17 LINDA SINGER

18 WILMER CUTLER PICKERING HALE & DORR LLP
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19 FELICIA ELLSWORTH
ALAN SCHOENFELD
20 JOHN BUTTS

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(Case called)

THE DEPUTY CLERK: Will the parties please identify themselves for the record.

MS. LIU: Mimi Liu on behalf of plaintiff, the Government of the United States Virgin Islands.

MS. SINGER: Linda Singer for the Virgin Islands.

MR. ACKERMAN: David Ackerman for the Virgin Islands.

MS. ELLSWORTH: Good afternoon, your Honor. Felicia Ellsworth for JPMorgan Chase.

MR. SCHOENFELD: Alan Schoenfeld for JPMorgan Chase.

MR. BUTTS: John Butts for the JPMorgan Chase.

THE COURT: Welcome. And I'm ready to hear argument on the cross-motions for summary judgment. Now to some extent they are two sides of the same coin, in some of the aspects, but not in all. Nevertheless, to maintain some sort of order, why don't we start with the Virgin Islands's motion, and then we'll turn shortly thereafter to JPMorgan's motions. I don't want anyone to recite at any great length what's in your briefs.

I thank you for their excellent briefs, but it was 80 pages and I did manage to read them all without falling asleep. And so really this is your opportunity to address matters and issues that were not fully addressed in your brief, either because they were raised in someone's else reply papers or for whatever reason. Let me hear first from moving counsel.

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1 MS. LIU: May it please the Court. Mimi Liu on behalf
2 of plaintiff, Government of the US virgin Islands. I will be
3 arguing our motion for summary judgment on the Trafficking
4 Victims Protection Act claims, and my colleague Mr. Ackerman
5 will be arguing our motion on the affirmative defenses, your
6 Honor.

7 THE COURT: Okay.

8 MS. LIU: In its order on the motion to dismiss, the
9 Court said that the plaintiffs adequately allege knowledge,
10 participation and benefit to show JPMorgan participated in
11 Epstein's sex trafficking venture in violation of 1591(a)(2).

12 THE COURT: So they dispute, among other things,
13 knowledge and intent, and almost always those are jury
14 questions. Why can they be disposed of on summary judgment
15 here?

16 MS. LIU: Your Honor, no reasonable juror could find
17 that JPMorgan did not know or did not recklessly disregard that
18 its client Jeffrey Epstein was engaged in sex trafficking. In
19 your motion to dismiss order, you said that it is sufficient
20 that JPMorgan was aware of Epstein's convictions for sex crimes
21 and ignored numerous red flags associated with Epstein's
22 accounts.

23 The undisputed facts show that JPMorgan knew, not only
24 at the time of his convictions in 2008, but two years earlier
25 in 2006, that Epstein had engaged in sex crimes involving

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1 minors. The evidence shows that Epstein confessed all but the
2 ages to Jes Staley, and Jes Staley turned around and reported
3 it to Mary Erdoes, and that is corroborated in a written email.

4 The ages were undeniable from the reports that were
5 based on police documents that JPMorgan reviewed in 2006.
6 Compliance staff later acknowledged that Epstein was "known to
7 pay cash for his massages, and minors aren't the issue," which
8 is precisely what was reported in the news in 2006. And then
9 when we get to the question of JPMorgan ignoring numerous red
10 flags, they did more than that, your Honor.

11 In 2019, the filing with the department of treasury
12 after Jeffrey Epstein was dead identifies more than \$1 billion
13 in transactions for Epstein that the bank says are related to
14 human trafficking dating back to 2003, \$1 billion in
15 transactions related to human trafficking dating back to 2003.
16 By 2006, the bank thus had reams of financial information
17 related to Jeffrey Epstein that corroborated his sex crimes
18 involving children.

19 THE COURT: So what about the argument that your
20 adversary makes that, that doesn't preclude them from offering
21 ordinary banking services? Even convicted felons are entitled
22 to avail themselves of ordinary business. They could buy
23 groceries. They could buy land. And in this case, they can
24 have bank accounts, so why isn't that preclude summary
25 judgment?

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1 MS. LIU: Well, again, in your motion to dismiss
2 order, your Honor, you identified a number of categories where
3 the Court said, these are sufficient to show that JPMorgan
4 engaged in active non-routine or non-ordinary banking services.

5 THE COURT: Yes, and that was on motion to dismiss
6 taking everything in your favor. But the question now is
7 whether you have established that through undisputed evidence
8 that no reasonable juror could find to the contrary.

9 MS. LIU: Yes. In addition, the New York banking
10 regulator looked at a number of categories as well, and the New
11 York banking regulator said vis-a-vis Deutsche Bank that these
12 are examples of activity that fall outside ordinary banking
13 services. And we have proven on summary judgment starting with
14 the fact that JPMorgan has admitted that it handled more than
15 \$1 billion in suspicious transactions, again related to human
16 trafficking for Epstein over a 16-year period from 2003 to
17 2019.

18 And just to put that \$1 billion number in context,
19 your Honor, in their counterstatement of undisputed material
20 facts at paragraph 19, JPMorgan argues that \$900 million of
21 funds flowed through Epstein's accounts at JPMorgan from 2003
22 to 2013. This means that Epstein's entire business with
23 JPMorgan and JPMorgan's entire business with Jeffrey Epstein
24 was human trafficking.

25 JPMorgan was a full service bank for Jeffrey Epstein's

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1 sex trafficking. If you look at the *Canosa* case that we
2 discussed at the motion to dismiss stage, it talks about
3 facilitating sex trafficking on the front-end and then covering
4 it up the back-end, which allows ongoing sex trafficking, that
5 is precisely this case. On the front-end, JPMorgan after
6 knowing that Jeffrey Epstein had engaged in felony sex crimes
7 with children handled \$4 million in payments to girls and
8 women, many with Eastern European names, and over \$5 million in
9 cash withdrawals which it repeatedly tied to his felony sex
10 crimes.

11 That's \$9 million in transactions which JPMorgan
12 argues on reply is a drop in the bucket relative to the \$900
13 million in funds that flowed through Epstein's accounts at
14 JPMorgan.

15 But if you take that \$9 million -- and this is a bank,
16 and this is a bank reviewing as part of their due diligence all
17 of the news reports and the police documents -- if you take
18 that \$9 million, your Honor, and you divide it by the couple of
19 hundred dollars that Epstein was known to pay a victim, and the
20 couple of hundred dollars that Epstein was known to pay the
21 young women who recruited that victim, you get more than 20,000
22 unlawful sex acts facilitated by JPMorgan.

23 Again, I would submit, no reasonable juror could find
24 that JPMorgan did not participate in Jeffrey Epstein's sex
25 trafficking venture.

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1 THE COURT: Okay. Let me interrupt you. We're going
2 to sort of go back and forth just to try to keep aspects of
3 these motions completed. So let me, just on what you've argued
4 so far, let me hear from defense counsel, then we'll come right
5 back to you.

6 MS. ELLSWORTH: Thank you, your Honor, Felicia
7 Ellsworth for JPMorgan. I'll start where the Court did,
8 knowledge is a key element of the US Virgin Islands claim here.
9 Knowledge is almost never susceptible to disposition on summary
10 judgment, and it certainly is not here. There's sworn
11 testimony from multiple JPMorgan current employees and former
12 employees that the US Virgin Islands took testimony from, each
13 of whom to a person testified they did not have knowledge.

14 THE COURT: Let me raise an issue that I don't think
15 was raised clearly by your adversary, but that won't stop me.
16 So if we look at section 1595(a) for lawsuits not brought by
17 the state, but by individuals, civil lawsuits, the knowledge
18 requirement there is knew or should have known, as opposed to
19 the criminal section, which it's knew or recklessly
20 disregarded. Should have known sounds awfully much like
21 negligence. So if all they have to show is negligence, are
22 they not entitled to summary judgment?

23 MS. ELLSWORTH: That's not all they have to show, your
24 Honor. *Parens patriae* plaintiff under 1595(d) -- and I don't
25 think the US Virgin Islands has disputed this fact --

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1 THE COURT: No, they haven't. You're correct in that,
2 but --

3 MS. ELLSWORTH: It's knowledge or reckless --

4 THE COURT: -- but I'm infamously activist judge, so
5 I'm raising it independently.

6 MS. ELLSWORTH: When you look at 1595(d), it
7 incorporates only the section 1591, the criminal provision. So
8 what the 1595(d), which is the *parens patriae* action, it says
9 that a state has reason to believe that an interest of the
10 residents of the state is threatened or adversely effected by
11 any person who violates section 1591, and that's the criminal
12 provision.

13 THE COURT: Yeah, but the question would be -- and you
14 may well be right on that. I'm not suggesting necessarily to
15 the contrary. But since this is a civil action, why shouldn't
16 section (d) be read in the context of the primary civil action
17 requirement set forth in (a)?

18 MS. ELLSWORTH: I don't think it should be because I
19 don't think that's what Congress set out. Congress set out and
20 incorporated. Congress could have chosen to add a *parens*
21 *patriae* cause of action to 1595(a), for example; but instead it
22 quite explicitly added this section (d) separately and
23 incorporated only the criminal underlying conduct which would
24 be knowledge or reckless disregard. I think the statutory
25 structure is fairly clear. I also don't think it particularly

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1 matters in purpose of your Honor deciding today's motion.

2 THE COURT: The statute is clear? This is the
3 Congress of the United States, they never write clear statutes.
4 We know that.

5 MS. ELLSWORTH: I think the construction that your
6 Honor can make of the statute should not be difficult to
7 understand that what Congress --

8 THE COURT: Let's assume you're right about that. I
9 just wanted to flag that issue. Go back to the point you
10 wanted to make.

11 MS. ELLSWORTH: If I could raise one more point on the
12 scienter standard. I just want to make clear. We point this out
13 in our affirmative motion. I'm happy to address it then. But
14 prior to 2008, the standard has to be just knowledge, not even
15 reckless disregard given the timing when that was added to the
16 statute. But in any event, I come back to the question that
17 the Court ask my adversary to begin with, which is this is
18 simply not an issue that is susceptible to determination on
19 summary judgment. It is not the case that no reasonable juror
20 could find that there wasn't knowledge or reckless disregard
21 depending on the timing here.

22 There is hotly disputed testimony and evidence. There
23 is, as I said, testimony from JPMorgan current and former
24 employees disclaiming knowledge. That testimony would be
25 subject to a credibility determination by the jury as to

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1 whether or not in fact the information that the US Virgin
2 Islands has pointed to and that Ms. Liu pointed you to today
3 was information that JPMorgan considered and found that there
4 was some reason to even suspect that there was something that
5 would be an actual violation of the TVPA.

6 THE COURT: Okay. Let me go back to plaintiff's
7 counsel. We're going to go back and forth with apologies.
8 Anything further before we turn to the other prong of your
9 motion that your colleague is going to address, anything
10 further you wanted to say on this prong?

11 MS. LIU: Only, Judge, to clarify in terms of your
12 question about constructive knowledge in 1595. We did argue at
13 the motion to dismiss stage at footnote one in our opposition
14 brief, which is docket 49, that a constructive knowledge
15 standard applies also to the government's civil case under
16 1595.

17 THE COURT: This is not a question of constructive
18 knowledge. That's a different issue.

19 MS. LIU: Or knew or should have known.

20 THE COURT: Okay. So in your view you haven't waived
21 that argument?

22 MS. LIU: We have not waived that argument. And, in
23 fact, the point that we made there is that if you look at the
24 legislative history of 1595(d), it's clear that Congress wanted
25 to give extra litigation leverage to individuals and more

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resources to pursue civil prosecution against sex trafficking.

So obviously Congress did not intend to apply a higher scienter standard to a *parens patriae* action than it did to the original civil action.

THE COURT: That may or may not be, why shouldn't Congress or why couldn't Congress have rationally decided, if it's an individual is a victim, we're going to make it a negligent standard; but if it's a state with all the force that a state brings and with assertion by the state that it's bringing a, if you will, quasi-criminal case, we're not going to apply that lower standard. Why wouldn't that be a possible interpretation of what Congress did?

MS. LIU: I just don't think that there's anything including the legislative history would be to the contrary in 1595(d) to suggest that Congress wanted to apply a criminal scienter standard to a civil action by the government.

And if I could just clarify one point. Ms. Ellsworth mentioned the knowledge or reckless disregard pre-2008. That goes to a different point. That knowledge or reckless disregard goes to knowledge or reckless disregard of sex trafficking. This particular knew or should have known standard goes to the participation in the venture. These are two different scienter standards.

THE COURT: Let me hear from your colleague then on the next prong.

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1 MR. ACKERMAN: Thank you, your Honor. May it please
2 the Court. David Ackerman for the Virgin Islands. The Court
3 expressed skepticism in denying JPMorgan's motion to strike
4 these affirmative defenses, and those concerns were
5 well-founded. Despite having taken expansive discovery of the
6 Virgin Islands, including the depositions of three current or
7 former governors and three former Attorneys General and
8 receiving nearly a hundred thousand pages in discovery,
9 JPMorgan's attempts to blame the USVI have no merit in law or
10 in fact. The Court received voluminous briefing, but nowhere
11 --

12 THE COURT: You needn't remind me of that.

13 MR. ACKERMAN: I thought using the word "voluminous"
14 may have triggered a memory, your Honor. But nowhere in these
15 reams of documents are there facts that show any knowledge of
16 human trafficking or red flags by any USVI government official.

17 Your Honor, this is an important moment for both this
18 case and more fundamentally for the development of TVPA
19 enforcement law. As the Court is aware, this is the first
20 civil attorney general, civil enforcement action brought under
21 the TVPA. The government of the Virgin Islands, not Florida,
22 not New York, has stepped up to challenge the biggest bank in
23 the world over its enforcement practices. And it has permitted
24 through significant discovery calculated to test the
25 government's resolve and shift attention away from the bank's

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own failings.

And the case law establishes, your Honor, that these affirmative defenses are not cognizable at law and JPMorgan's briefing barely disputes that fact. The facts that JPMorgan attempt to stitch together lack any fact tying government action to Epstein's trafficking.

THE COURT: Well, are you saying that even if JPMorgan is able to prove that the Virgin Islands were culpable initially in letting Mr. Epstein's misconduct go forward to a certain point in time, that that is completely irrelevant to any of the issues in this case?

MR. ACKERMAN: What I'm saying, your Honor, is that the affirmative defenses that JPMorgan has asserted are not cognizable at law. Whether they may be relevant at some other stage could be a question, we don't think they are. But the issue before the Court now is simply the affirmative defenses, and these affirmative defenses have no basis.

THE COURT: All right. Let me hear from again, with apologies for interrupting, let me hear from defendant's counsel.

MR. SCHOENFELD: Thank you, your Honor. Alan Schoenfeld for JPMorgan Chase. USVI's lead argument I think is one that the Court has already rejected cause the Court found in the bottom line order in the motion to strike that those claims were available, or those affirmative defenses were

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1 available as a matter of law. And the Court did express
2 skepticism -- and I'm happy to allay the Court's skepticism
3 today. But as a matter of law, *in pari delicto* and unclean
4 hands are clearly available to JPMorgan Chase to assert its
5 affirmative defenses to USVI's two TVPA claims. That's
6 consistent with the Court's holding in *Google* and *Facebook*,
7 which USVI never addresses, and both of which make clear that a
8 state government suing *parens patriae* under a federal statute
9 is a private actor susceptible to equitable defenses.

10 So the only question on this motion for summary
11 judgment is whether there's any issue of disputed fact as to
12 whether USVI's misconduct precludes its claims that JPMC
13 knowingly benefited from participation or obstructed a federal
14 investigation into Epstein. And a jury could reasonably
15 conclude that USVI's decades-long entanglement with Epstein
16 precludes judgment in USVI's favor. I'm happy to start with
17 knowledge. USVI claims that unlike JPMC, "There's no evidence
18 that any government official or employee had knowledge of what
19 was occurring on Epstein's private Island." But in 2007 --

20 THE COURT: I guess what I'm having a little trouble
21 is, it's one thing to say that their alleged involvement in
22 complicity if you will, it effects the timeframe involved, it
23 effects perhaps the extent of the relief they're entitled to;
24 but I'm not sure I've seen any case on facts similar to this
25 where it's a total bar of their bringing an action at all.

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1 MR. SCHOENFELD: We've asked two sets of affirmative
2 defenses. The first is *in pari delicto* and unclean hands,
3 which I think would defeat the claims as a matter of law. And
4 those are both well-established affirmative defenses that go to
5 liability.

6 THE COURT: I'm just putting this in the context of a
7 state as opposed to an individual. A state fails to prosecute
8 or take action against someone who's committing a crime within
9 their state, and they do that even though they knew or
10 recklessly disregarded that that person was committing that
11 misconduct. And then they wake up and they say, you know, this
12 is really too much too far, and so they say we're going to
13 prosecute. I don't know of any cases that says they can't
14 prosecute in that situation.

15 MR. SCHOENFELD: This is a critical distinction, and
16 I'm glad your Honor raised it. And this is exactly what the
17 Court held in both *UPS* and *FedEx* to mark the distinction
18 between the enforcement actions that the City of New York was
19 bringing under the CCTA, which is the something, something
20 Tobacco Act, and RICO. And under the CCTA, the City had been
21 delegated enforcement authority by Congress to bring these
22 actions as a law enforcement authority.

23 And in those circumstances, the Court held that
24 unclean hands was not available as an affirmative defense,
25 including because the defendant couldn't challenge the

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1 government's discretionary law enforcement decision making.

2 That would apply if what we were talking about is
3 USVI's enforcement of the TVPA, but that's not why they're
4 here. They have no authority to enforce the TVPA. They have
5 the ability under 1595(d), which is what you were just
6 discussing with Ms. Ellsworth, to bring a claim *parens patriae*
7 to seek civil relief for injuries done to residents of the
8 US Virgin Islands. That is not a law enforcement authority.
9 That is a private claim brought *parens patriae*, and that's
10 precisely what the Court says in *Google* and *Facebook*.

11 In both of those cases, states were coming in to
12 enforce the *Clayton Act* to stop a merger. And the Court
13 said -- it's the SDNY in *Google* and the District of Columbia in
14 *Facebook* -- the Court said in both of those cases, Congress
15 chose not to give enforcement authority under the United States
16 Antitrust Laws to states and municipalities. It did decide to
17 supplement the ability of private parties to enforce those laws
18 through the *Clayton Act*. And in those cases, the states were
19 bringing those actions *parens patriae* to enjoin mergers and to
20 defeat other sorts of allegedly anti-competitive activity.

21 And the Court said, in those capacities where they are
22 not enforcing the anti-trust law, but instead seeking civil
23 relief against a merger, they are just as susceptible to a
24 *Laches* defense as any private actor. So the distinction you're
25 drawing is absolutely right. You can't bring a *Laches* claim,

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1 especially when there's an applicable statute of limitations
2 against the government to challenge its failure to prosecute,
3 its selection among discretionary prosecutorial options. That
4 is not why we're here. That is not what the USVI is doing in
5 this case. They are a private litigant, regardless of the fact
6 that they are suing *parens patriae*.

7 There are special standing rules that apply under
8 Article 3, and that's the *Snapp* line of case law. But as far
9 as the role that they are occupying here, it's not a law
10 enforcement role. So using *UPS* and *FedEx* as our models, the
11 actions brought under the CCTA are not the relevant actions.
12 It's the actions brought under RICO that are the relevant
13 actions, where they were suing as an aggrieved essentially
14 private party, *parens patriae*, and there they were susceptible.
15 The City in both cases were susceptible to the unclean hands
16 and *in pari delicto* defenses that *FedEx* and *UPS* had advanced.

17 THE COURT: All right. Let me go back to plaintiff's
18 counsel to respond, and then we'll go to the next issue.

19 MR. ACKERMAN: Couple of responses, your Honor. First
20 of all with respect to *UPS*. What the *UPS* case says about
21 enforcing statutes is, they initially quote the *UPS* case
22 correctly. It says the case law in the area of executive
23 discretion generally relates to a party's attempt to require
24 particular enforcement or hold a public entity responsible for
25 lack of an adequate enforcement. But the case then observes

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1 courts have in numerous other instances declined to probe into
2 government actor's decision making in circumstances where the
3 government was acting in the sphere of enforcing public rights
4 in the public interest, and that is exactly what's happening
5 here.

6 THE COURT: They just said it again here, they don't
7 think you, in this situation, are really enforcing public
8 rights. You are enforcing the private rights of your citizens
9 that may not be enforceable by those citizens, and we'll get
10 later to the question of whether the settlement bears on that.
11 But what is the public right you are enforcing by your action?

12 MR. ACKERMAN: This is a civil enforcement action,
13 your Honor. And what Congress has given the USVI and all other
14 states is the authority to enforce this statute specifically.
15 And in these types of cases, such as *Phillip Morris*, when
16 states are proceeding as a civil enforcement authority -- and
17 *Phillip Morris* I think is very instructive because the
18 defendant in that case, the tobacco company, argued *in pari*
19 *delicto* defenses because the government failed to communicate
20 to the public its knowledge of the properties of nicotine; or
21 they relied on the conduct of government scientists; or the
22 department of defense was subsidizing cigarette sales.

23 It relied on regulatory decisions concerning the
24 creation of so-called safer cigarettes. And the Court rejected
25 the unclean hands defense. It held, When as here, the

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1 government acts in the public interest, the unclean hands
2 doctrine is unavailable as a matter of law.

3 THE COURT: So I understand that point, but I'm
4 looking at subsection (d) of 1595, the section under which you
5 sue "In any case in which the Attorney General of the state has
6 reason to believe that an interest of the residents of that
7 state has been or is threatened or adversely affected by any
8 person who violates section 1591, the Attorney General of the
9 state is *parens patriae*, may bring a civil action against such
10 person on behalf of the residents of the state in an
11 appropriate district court of the United States to obtain
12 appropriate relief."

13 So the statute seems to contemplate that you're not
14 acting in the same way, for example, that the SEC might in a
15 civil action brought by the SEC; but rather more as, at least
16 so far as compensatory damages and the like are concerned, as
17 the representative of residence who for whatever reasons cannot
18 or have not brought their own actions. Now it might be
19 different to the extent that you're seeking injunctive relief.
20 But with respect to -- and this unfortunately gets into the
21 next motion -- but as I said they are intertwined -- with
22 respect to the relief that is geared to compensating victims,
23 in this case residents of the state, why aren't you in that
24 respect at least acting as the equivalent of a private
25 representative?

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1 MR. ACKERMAN: Your Honor, you have hit the nail on
2 the head, which is that there is overlap between these motions,
3 and I believe Ms. Liu was handling this point. So what I would
4 say is that for certain UPS --

5 THE COURT: Take a guess at what she would have said.

6 MR. ACKERMAN: That's fair, your Honor.

7 THE COURT: Go ahead.

8 MR. ACKERMAN: I believe that was -- and with respect
9 to --

10 THE COURT: I'll tell you what, I won't put you on the
11 hook. Ms. Liu, what did you want to say in that regard?

12 MS. LIU: So, Judge, you've already held at the motion
13 to dismiss stage in the challenge to our *parens patriae*
14 authority that the Virgin Islands has a quasi-sovereign
15 interest in assuring its residents it will act to protect them
16 from the harmful effects of criminal sex trafficking
17 enterprises flourishing in the islands.

18 THE COURT: You correctly quoted me, and I thought it
19 was a brilliant statement, but now we're getting -- and we are
20 getting now into the next series of motions while we're there,
21 but that may have to be distinguished depending on which kind
22 of relief you're seeking.

23 I think there's a strong argument that if you're
24 seeking injunctive and declaratory relief, you're acting in the
25 public interest, as well as in the interest of the residents

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1 individually. But when you're seeking compensatory damages,
2 I'm not sure why that's so.

3 MS. LIU: So the case law, Judge, on this issue,
4 including in the Second Circuit in the *Purdue Pharma v.*
5 *Kentucky* case that is cited in I think both parties' papers
6 specifically says, If the Attorney General as *parens patriae* is
7 the real party in interest, which is determined by assessing
8 whether or not they have a quasi-sovereign interest, as this
9 Court has held the Attorney General here does, then the
10 question of what specific relief they're seeking does not
11 necessarily negate that *parens patriae* authority or interest.

12 So, for example, the *Purdue Pharma v. Kentucky* case,
13 injunctive relief was sought, civil penalties were sought, and
14 also damages to individual victims was sought. And the Court
15 specifically said the fact that the primary purpose of this
16 case is to pursue the public interest or to act in the public
17 interest means that the add-on of additional request for
18 compensatory damages does not negate the overall *parens patriae*
19 nature of this matter.

20 That is a consistent holding in numerous cases that we
21 cite in our papers, including the *AU Optronics* case, the
22 *Balderas* case and other cases.

23 THE COURT: What about the argument -- now we really
24 are getting into the other motion, but I think I have no choice
25 cause it logically follows. What about if you're not entitled

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1 to compensatory damages cause they're duplicative of the class
2 action. Assuming for the sake of argument that I approve the
3 class action settlement, what about that?

4 MS. LIU: I would submit, Judge, that Congress -- so
5 the *Seneci* case, the Second Circuit case in *Seneci*, what that
6 case says is if all you're seeking in an AG case, all you're
7 seeking. And the only thing sought there was compensatory
8 damages for individuals. If that's all the AG is seeking,
9 we're going to have to question *parens patriae* standing. And
10 that's not all we're seeking. And our primary purpose is the
11 quasi-sovereign interest of assuring residents that sex
12 trafficking will not continue to flourish in the US virgin
13 Islands. But even the *Seneci* case says --

14 THE COURT: Specifically -- I hear what you're saying,
15 but tell me exactly specifically what relief you are seeking
16 assuming for the sake of argument you're entitled to any and
17 all appropriate relief?

18 MS. LIU: We are seeking injunctive and declaratory
19 relief.

20 THE COURT: Injunctive against who?

21 MS. LIU: We are seeking injunctive relief against
22 JPMorgan.

23 THE COURT: To not do anymore banking with
24 Mr. Epstein.

25 MS. LIU: No, Judge. Just as in the *Snapp* case where

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1 the action, the discriminate conduct occurred in 1978 ended.
2 The case was brought a year later in 1979. The Supreme Court
3 said you can seek injunctive relief against this actor to
4 conform their conduct with the law. So our injunctive relief
5 that we're seeking is requiring that JPMorgan conform its
6 conduct to the protections of the Trafficking Victims
7 Protection Act, which is precisely what the Supreme Court
8 occurred in the *Alfred Snapp* case.

9 THE COURT: I know what you say they didn't do in the
10 past, but then, for example, they have subsequently filed SARs
11 and so forth. What is it you're saying they're not doing now
12 that they need to be ordered to do?

13 MS. LIU: Well, exactly like in the *Snapp* case where
14 the conduct had ended where the Court said, yes, but, in the
15 future we are going to enjoin you from violating the statute.
16 That is the same thing we are seeking here. There is nothing
17 to suggest that short of Jeffrey Epstein's death in 2019,
18 JPMorgan would act in conformance with the Trafficking Victims
19 Protection Act. Not vis-a-vis Jeffrey Epstein. Obviously he's
20 dead, but vis-a-vis other clients going forward in the future.

21 The only reason that JPMorgan finally after 16 years
22 reported the billion dollars in suspicious transactions for
23 Jeffrey Epstein is because he was arrested, and then he was
24 dead. This was a CYA reporting after 16 years of all of the
25 monies flowing in his JPMorgan accounts after he was dead.

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1 There is nothing -- and JPMorgan, as we've argued to the Court
2 in our letter brief, is a repeat offender. They have been
3 fined countless times for violating the law. There is nothing
4 to suggest that on its own JPMorgan is going to conform with
5 the law absent an injunction from this Court, which is
6 precisely what *Alfred Snapp* authorizes in terms of ongoing on
7 future conduct.

8 In terms of past harm, which the statute clearly
9 recognizes, the only forms of relief available are compensatory
10 and punitive damages for individuals and civil penalties.
11 Civil penalties is no doubt a traditional law enforcement
12 remedy. And civil penalties was in fact, your Honor, a remedy
13 at common law.

14 So I would submit that whether or not you read the
15 statute to authorize civil penalties, which we believe it
16 plainly does, civil penalties is a remedy at common law for
17 civil law enforcement. And thus to the extent they say the
18 statute merely codifies the common law *parens patriae*
19 principles outlined in *Alfred Snapp*, it certainly codifies the
20 common law authority of Attorneys General in civil law
21 enforcement actions to seek civil penalties as we do here.

22 THE COURT: I know there's more you want to say, and
23 you will have that opportunity, but let me turn to defense
24 counsel. And at this point, you're free to get into your
25 motions as well, because I think we can't avoid the interplay

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1 of those motions.

2 MS. ELLSWORTH: Thank you, your Honor. Let me start
3 where Ms. Liu just ended. This is not a law enforcement
4 action. This is not the US Virgin Islands proceeding as a law
5 enforcement entity enforcing its own law. If they were trying
6 to enforce one of its territorial laws, then it could be a law
7 enforcement action. It did try and bring such a case, and the
8 Court dismissed it.

9 THE COURT: But the statute doesn't limit them to
10 that. The statute says that they can, when they have reason to
11 believe that the interest of the residents of their state has
12 been or is threatened, they can bring a civil action.

13 MS. ELLSWORTH: A *parens patriae* civil action, which
14 means they need to show injury, and the Court found that at the
15 motion to dismiss stage, they could survive a motion to dismiss
16 based on the articulation of injury that Ms. Liu read to you,
17 or maybe it was Mr. Ackerman, which was injury to the residents
18 of the US Virgin Islands.

19 But what we come to the Court with a motion for
20 summary judgment on the damages that they're seeking. Let me
21 put the injunction relief to the side for a moment, but I'd
22 like to come back to it. The damages that US Virgin Islands
23 purports to seek in this case are not damages that are tied to
24 that injury that they asserted in the motion to dismiss.

25 THE COURT: What about your adversary mentioned what

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1 she called civil penalties. In some of the briefing it's
2 referred to as punitive damages, but what about that? In other
3 words, can't they -- even if they, for the sake of argument,
4 the victims were all totally compensated by the settlements
5 that are before me, their argument is, civil penalties still
6 need to be imposed. Those have a quasi-punitive purpose that
7 is not served by mere compensatory damages.

8 You say, among other things in your papers, well,
9 there's a lot of law that says that if you can't show
10 compensatory damages, you can't get punitive damages; but I
11 wonder if that's really analogous to a situation where it's the
12 state suing *parens patriae*.

13 MS. ELLSWORTH: I think it is. On the compensatory
14 damages, just briefly, the compensatory damages that the US
15 Virgin Islands now seeks are the very type of damages that they
16 cannot seek as *parens patriae*. They are individual victim
17 damages. They call them victim damages. It's simply not
18 cognizable under the *parens patriae* law, and that's *Seneci* and
19 that's the *Vacco* case. I didn't hear Ms. Liu argue it. It
20 really is not available to them under *Snapp* or under any *parens*
21 *patriae* doctrine.

22 Under civil penalties, again, Ms. Liu just said, civil
23 penalties are a traditional law enforcement mechanism, but this
24 is not law enforcement. The TVPA section 1595(d) allows them
25 to bring a civil action, *parens patriae*, and allows them to

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1 seek appropriate relief. That's not defined in the statute.

2 THE COURT: I must say, I think that's -- of all the
3 questions, very interesting questions that you folks have
4 presented me with, one of the most interesting is, there's not
5 much indication, as near as I can tell from your briefs, as to
6 what Congress meant by appropriate relief.

7 MS. ELLSWORTH: I'm not sure Congress elucidated at
8 much beyond putting those words into the statute, so that's the
9 job for the Court. But I do think what the Court can look at
10 are a few different things. The first is, *parens patriae* is
11 different than law enforcement. And Mr. Schoenfeld spoke about
12 the *UPS* and the *FedEx* cases that draw the distinction between
13 the state acting as an enforcement agency when it is delegated
14 that authority by a federal statute, versus a state acting as
15 essentially a civil plaintiff when the only right of action
16 that it's given by a federal statute is as a civil plaintiff.

17 The TVPA does not delegate enforcement authority to
18 any state attorney general or the USVI. What the TVPA allows
19 is a civil action that allows them to try and seek some form of
20 relief, whether it's injunctive or damages if they could show
21 them. They have not articulated any damages that map onto the
22 interest to the territory that was articulated at the motion to
23 dismiss.

24 THE COURT: Maybe I misunderstood their argument, but
25 I think the argument goes, at least in part, we want injunctive

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1 relief to make sure the bank doesn't undertake this alleged
2 misconduct in the future. And we think under their
3 interpretation of the statute and the law that we can add on to
4 that civil penalties for the prior misconduct. What about
5 that?

6 MS. ELLSWORTH: Again, it's not contemplated by the
7 statute that they would have civil penalties.

8 THE COURT: The question is, what is meant by
9 appropriate?

10 MS. ELLSWORTH: Well, then I think appropriate relief
11 could be injunctive relief. It could be some form of damages if
12 there were damages that actually mapped onto the *parens patriae*
13 interest. To allow them, particularly in the facts in this
14 case, to assert civil penalties or to award civil penalties
15 would be, as you just indicated, those are essentially like
16 punitive damages, that would be a retroactive application of
17 some sort of penalty to a provision that was added in 2018.
18 And the conduct of course that the US Virgin Islands challenges
19 here is conduct that dates back to the late '90s.

20 So I don't think that -- putting aside whether that's
21 actually even contemplated in the TVPA sort of writ large in
22 this case. To have civil penalties applied for conduct that
23 predates the right of action under which the US Virgin Islands
24 precedes would be an improper retroactive penalty.

25 But I also think it's not sort of what the statute set

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1 out. What the statute set out was to allow an Attorney General
2 to try and bring some form of civil action to the extent that
3 they had some separate form of damage to the territory, to the
4 quasi-sovereign interest.

5 And the US Virgin Islands could have tried to prove
6 that form of damage. And they had at various different points
7 theories and dollar amounts that were disclosed as being those
8 potential damages. They have withdrawn all that. They are not
9 seeking relief for the actual injury that allowed them to bring
10 this suit as *parens patriae*, and that's why no form of monetary
11 damages is available to them in this case.

12 I talked about compensatory damages briefly. We
13 talked about civil penalties. I do want to just note the US
14 Virgin Islands suggest that even if they can't get compensatory
15 damages, somehow maybe punitive damages would still be
16 appropriate. That's frankly just incorrect, under both the
17 common law availability of punitive damages, which are only
18 when there is something compensatory, and under the
19 constitutional sort of ratio due process clause. So I don't
20 think punitive damages could possibly be on the table either.

21 Restitution and discouragement are two other forms of
22 damages that they have articulated. Restitution would have to
23 be for some harm to the US Virgin Islands. That's what
24 restitution is. Of course they have not articulated that. And
25 discouragement is only available to victims, and they don't

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1 claim to be a victim of anything either. They claim to proceed
2 on behalf of the interest of the territory to try and vindicate
3 this quasi-sovereign interest.

4 Let me turn to the injunctive relief request because
5 you discussed that at some length with Ms. Liu. I think the
6 Court's questions are the right ones which is, What is the US
7 Virgin Islands seeking to enjoin? And what basis does it have
8 to believe that there is a need to enjoin anything? The US
9 Virgin Islands has listed no evidence that sitting here today
10 JPMorgan Chase is not conducting itself in compliance with the
11 TVPA or with any of the federal anti-money laundering statutes
12 or any of the other sort of bank regulations that have form the
13 basis of some of their claims.

14 There's not a scintilla of evidence in the record that
15 suggest that there is lack of compliance today -- and I would
16 argue lack of compliance historically, but putting that to the
17 side. There's no suggestion that there would be any need that
18 they could possibly make out the showing required for
19 injunctive relief, either balance of harms for some of the
20 reasons Mr. Schoenfeld was discussing relating to some of the
21 affirmative defense.

22 But more importantly, there is no suggestion that
23 there is a need to have an injunction from a court that says
24 follow the law when they haven't elucidated any evidence that
25 JPMorgan is not following the law.

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1 THE COURT: I think their argument at least in part as
2 I understood from what Ms. Liu just had to say was, you didn't
3 file SARs in her view purposely because you were accommodating
4 Mr. Epstein's misconduct, because it was lucrative for you to
5 do so.

6 Then when finally things just got impossibly out of
7 hand, the publicity was too bad or whatever, you, in her view,
8 belatedly filed those SARs almost -- she would argue --
9 admitting thereby that you should have filed them sooner. And
10 that that shows a pattern of behavior that needs to be enjoined
11 going forward. Those are not the Court's arguments one way or
12 the other. I'm just trying to articulate what I understood her
13 to be saying.

14 MS. ELLSWORTH: I think that that argument as
15 articulated by US Virgin Islands is simply contravened by the
16 facts. There are six filings made with the treasury department
17 during the course of the relationship between JPMorgan and
18 Jeffrey Epstein that predate that final post-death filing that
19 Ms. Liu was talking about.

20 So the suggestion that there were no filings at all is
21 imply incorrect. And the suggestion that there is a need to
22 have some kind of follow the law injunction from this Court for
23 the bank to have an adequate compliance program, again there
24 have been no facts adduced to suggest that sitting here today
25 in 2023, the compliance program is not squeaky clean.

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1 So I don't think that you can just say, well, I think
2 you did something not as well as you should have 20 years ago,
3 and so today the Court's going to enter an injunction without
4 knowing that you're not doing things perfectly appropriately
5 today. The time for facts is now, and they have not elucidated
6 them. If I could just be heard briefly, we also moved on the
7 obstruction claim.

8 THE COURT: Yes, and we need to hear from your
9 adversary on that as well, but go ahead.

10 MS. ELLSWORTH: Indeed, but since I have the
11 microphone, I'll start. We moved that summary judgment should
12 enter in JPMorgan's favor on the obstruction claim. Let me
13 give a few different reasons why I think that is.

14 THE COURT: Possession of the microphone is a weapon
15 not to be lightly disregarded.

16 MS. ELLSWORTH: And not to be abused, so I'll be
17 brief. The US Virgin Islands does not have standing for an
18 obstruction claim. The Court allowed the Doe class obstruction
19 claim to proceed pass the motion to dismiss stage because the
20 Doe class claim to be victims of the alleged obstruction of a
21 federal TVPA investigation. Virgin Islands hasn't claim nor
22 could it that it was a victim of an alleged obstruction of a
23 TVPA investigation.

24 It hasn't argued any harm, but more importantly it
25 hasn't suggested that somehow it was a victim. And it's only a

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1 victim of obstruction that can in fact bring a claim under the
2 TVPA for that obstruction. The harm, to the extent that there
3 was a harm beyond the individual victims, it would be to the
4 federal government to the extent there was an obstruction. So
5 I think there's sort of threshold standing problem with the US
6 Virgin Islands obstruction claim.

7 The second point I would make is, they have not put
8 forth any evidence that there was in fact a federal
9 investigation to obstruct. They have not identified, oh, there
10 was an investigation in 2010, and somehow that was obstructed
11 or impeded by conduct or lack of conduct by JPMorgan Chase.
12 They haven't met that second predicate act.

13 And then even more easily on the summary judgment
14 standard, they have not and cannot --

15 THE COURT: What about the arguments -- this goes back
16 to the SARs -- that there would or a reasonable jury could
17 conclude that there would have been an investigation had they
18 timely filed the SARs that she says you didn't file in a timely
19 fashion; and that therefore the effect of the failure to make
20 timely filings was an obstruction in the same way that, say,
21 destroying evidence before the government knows about the
22 underlying crime constitutes obstruction.

23 MS. ELLSWORTH: Again, it's a counterfactual argument,
24 and that's the problem with the argument. There were failings
25 made with the treasury department, and there was no response or

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1 action taken by the federal government in response to filings
2 made in 2002, 2003, 2008, 2013, 2015 and 2016. So the
3 suggestion that filing more than those particular reports would
4 have somehow spurred an investigation is I think contravened by
5 the fact that the things that were filed did not spur an
6 investigation.

7 I would also point out that the obstruction count
8 requires an intentional act. It requires an intent to impede
9 an investigation. We again have the opposite here. What the
10 testimony and the evidence in the record before you shows is
11 that JPMorgan Chase employees made inquiries of the federal
12 government about whether or not an investigation was ongoing
13 against Mr. Epstein.

14 And they were either told Can't confirm or deny, or
15 they were told by lawyers for Epstein that no investigation was
16 ongoing. So inquiring about the existence of an investigation
17 is the polar opposite of trying to obstruct.

18 THE COURT: I'm not sure that I need to or should give
19 any weight to the inquiries of Epstein's lawyers. When you say
20 the bank says to a crook, Are you under investigation,
21 Mr. Crook. Not me. The inquiries of the government are
22 typically responded to as you indicated with, We're not going
23 to comment one way or the other.

24 MS. ELLSWORTH: But again, what this all goes to is
25 whether there was intentional conduct. It doesn't matter

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whether it was right or wrong if an investigation was ongoing or not.

THE COURT: My point is couldn't a reasonable jury determine that the inquiries of Mr. Epstein's lawyers in that regard was simply, to use plaintiff's counsel colorful phrase, as CYA --

MS. ELLSWORTH: With apologies, your Honor.

THE COURT: -- approach as opposed to a sincere approach.

MS. ELLSWORTH: I don't think sincerity matters for purposes of obstruction. They need to show an intentional attempt to impede an investigation, and the conduct that I've just described is the opposite of that. It's an attempt to determine if there's an investigation ongoing, as opposed to an attempt to hide evidence, destroy evidence, sort of all the typical obstruction type conduct.

The last point I would make on the obstruction claim is just to point out that again we have a 2008 retroactivity problem. So the obstruction cause of action was added to the TVPA in December of 2008, so any conduct that predates that on which the US Virgin Islands would seek to rely cannot be a basis for a liability under obstruction. Anything after 2008, that could potentially be a basis, but pre-2008 conduct is off the table for that purpose.

THE COURT: Thank you very much. Let me hear now

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again from the Virgin Islands.

MS. LIU: Thank you, your Honor. I just want to be clear on this issue about *parens patriae* being essentially the government acting as a private actor is completely contrary to all of the case law and the common law as it relates to *parens patriae* authority which is specifically the language used in 1595(d).

Parens patriae means parent of the country or parent of the state. The Attorney General is the one who can act as *parens patriae* because they can act in a law enforcement capacity to prosecute crimes civilly and criminally, but civilly here including crimes as heinous as child sex trafficking.

The very nature of *parens patriae* is the state acting as a civil law enforcer. Otherwise, it is not the real party and interest for purposes of a *parens patriae*'s action, and that's where you get into a number of these --

THE COURT: Well, that may be true as to *parens patriae* actions generally, but here of course the statute speaks of the interest of the residents, not the interest of the state independent of the interest of the residents. So I'm not totally sure whether there's a distinction to be made there or not.

MS. LIU: There absolutely is because if you look at *Alfred Snapp*, it distinguishes between three layers. One, the

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1 state acting in its pure sovereign capacity while the *parens*
2 *patriae* case. The state acting in its quasi-sovereign capacity
3 protecting the general interest of a substantial segment of its
4 population, that is the interest of its residents. And here
5 the Court has said, assuring its residents that it will be
6 protected from ongoing sex trafficking flourishing in the
7 Virgin Islands is exactly a quasi-sovereign interest of the
8 residents.

9 THE COURT: If that's so, accepting that for the
10 moment, that gets you to injunctive relief. It doesn't get you
11 to damages.

12 MS. LIU: That gets us, we submit, your Honor, not
13 only to injunctive relief under the common law, but also
14 declaratory relief and civil penalties.

15 Now when you get to the question of, Can you also
16 authorize in a *parens patriae* case compensatory and punitive
17 damages to individuals, the answer is yes. The Second Circuit
18 in *Seneci* said under common law *parens patriae*, we are not
19 going to determine their standing when you're seeking merely
20 damages on behalf of individuals. But, the Court said, citing
21 to the *Frito Lay* case, the legislature can authorize under
22 *parens patriae* authority the additional remedy of pursuing
23 compensatory or punitive damages.

24 THE COURT: But here we have all the injured members
25 of the class settled. They of course could have sought -- and

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1 undoubtedly would have sought if the case had gone forward --
2 punitive damages. They accepted a settlement that, if I
3 approve it, will very fully compensate the whole class of
4 victims. So what's left for you to seek in that regard?

5 MS. LIU: Before I answer that question, Judge, just
6 two more quick points on the *parens patriae* issue. I would
7 submit to the Court in the *AU Optronics* case. In that case the
8 Court I think summarized it nicely by saying *parens patriae*
9 representation is analogous to, for example, the role of the
10 EEOC. I think you asked about the SEC.

11 But what the Court says and what many of these cases
12 say is *parens patriae* authority is the state Attorney General
13 or state law enforcer acting in the role of a civil law
14 enforcement agency. And in fact in that case the Court said,
15 or other regulator, when it brings a case on behalf of a
16 segment of the public or in the interest of its residents.

17 So *parens patriae* is recognized as a civil law
18 enforcement or regulatory action, and we thus submit, for
19 example, as the New York banking regulator issued \$150 million
20 civil penalty against Deutsche Bank for its relationship with
21 Epstein, such a similar civil penalty can be awarded here.

22 But to answer your question, Judge, as to individual
23 victim damages. First of all, Congress has in numerous
24 examples that we cite, and also cited by defendants, authorized
25 under *parens patriae* authority for State Attorneys General the

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1 ability to seek money damages for individuals, in addition to
2 injunctive relief civil penalties and other forms of relief.

3 As far as I know, not a single one of those statutes
4 has been struck down as improperly allowing the Attorney
5 General in its *parens patriae* authority to seek civil damages
6 on behalf of individuals.

7 Going back to the *Seneci* case, citing to *Frito Lay*.
8 What *Frito Lay* says -- and this is the Second Circuit in *Seneci*
9 citing to the Ninth Circuit. What *Frito Lay* says is, State
10 legislatures or Congress can use its legislative power and
11 determine that within *parens patriae* authority one form of
12 relief that can be sought is compensatory or punitive damages
13 for victims. And that is one of form of relief we are seeking
14 here under the statute.

15 In terms of your questions about double recovery or
16 duplicative relief, that does not go to the question of whether
17 or not in the first instance Attorneys General under 1595(d)
18 have the authority to seek that relief. That is what happened
19 in this particular case. What happens in any particular case
20 cannot determine whether or not the authority existed. So
21 these are two different questions.

22 And in fact in their reply brief, JPMorgan argues the
23 question of *parens patriae* authority is analytically distinct
24 from what relief can be sought in a particular action. So I
25 would submit, we can seek it. The plain language of the

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1 statute allows it. The legislative history supports it. And
2 then when it comes before your Honor in the situation that's
3 present here, which may not be present in every case, there
4 could be an example where the Doe victims did not come forward.
5 They did not seek their own relief. And then what would the
6 Court say. You can't interpret 1595(d) differently in terms of
7 authority based on what happens in any particular case.

8 So the only question becomes, Can you seek it? Yes,
9 you can. And to what extent would a jury after a trial, if
10 there is a trial in this case, award in terms of compensatory
11 and punitive damages. They may award \$280 million, in which
12 case it then falls to the Court -- you can look at *EEOC v.*
13 *Waffle House* before the Supreme Court to decide what's the
14 offset.

15 THE COURT: Again, just for the sake of argument, if
16 the only relief you can seek is injunctive relief, declaratory
17 relief and civil penalties, is it a jury trial?

18 MS. LIU: I believe that civil penalties, your Honor,
19 as I mentioned -- and there's a Supreme Court case from 1987
20 called *Tull*. I think it's *Tull v. United States*. I think what
21 that case says is that a civil penalty was a remedy at common
22 law. And because it's a remedy at common law, I believe
23 liability can be determined by a jury. I don't want to get
24 ahead of myself here, but I think it's the case that perhaps
25 the judge can determine the amount of the civil penalty, but

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1 that a jury can hear the case and assess liability in that
2 context.

3 THE COURT: All right. Well, we don't need to reach
4 perhaps that issue on these motions. Only in my nightmares do
5 I see this as a bench trial. So, anyway, let me hear from
6 defense counsel.

7 MS. ELLSWORTH: So, your Honor, just to make a few
8 points in response to Ms. Liu's argument. The first is that
9 the cases where *parens patriae* actions were viewed more akin to
10 law enforcement actions that Ms. Liu was citing to, the *Purdue*
11 case, the *AU Optronics*. Those are all cases where there were
12 states pursuing under their own state laws.

13 THE COURT: You made that point before, and I think
14 it's an important point, but I understand that point.

15 MS. ELLSWORTH: So when they're enforcing their own
16 state law, it's just a different in kind. On the question of
17 injunctive relief -- and I do think the Court needs to think
18 about, again, what is the interest that is being articulated
19 here. And in particular, Does the US Virgin Islands even have
20 standing to seen an injunction here.

21 So the interest that's been articulated is protecting
22 the residents from the harm of potential sex trafficking. They
23 have not identified any actual concrete or particularized
24 injury that such future harm might befall the residents of the
25 US Virgin Islands or any territory; nor that that potential

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1 harm might be redressed by the injunction that apparently they
2 would be seeking. And although I don't think it's before you
3 on summary judgment as to the form of injunctive relief, if
4 any, of course liability would need to be established first.

5 But what I've heard articulated is, comply with the
6 law. Comply with the TVPA. And there's no suggestion that
7 that would redress whatever harm it is that they articulated at
8 the motion to dismiss stage, and they purport to continue to
9 articulate here.

10 I do want to go back to the civil penalties point
11 because I think it's important, and I hear the Court sort of
12 grappling with whether or not that's available here. It is a
13 traditional law enforcement penalty. It's called a civil
14 penalty, right, or a fine. That's by its nature punitive.

15 I'll point out the retroactivity point again, but
16 again that is not what Congress authorized State Attorneys
17 General to do here, didn't authorize State Attorney General to
18 enforce the TVPA as some law enforcement entity.

19 Congress knows how to do that. It has done that in
20 other federal statutes where it delegates some enforcement
21 authority to a State Attorney General. That is not what
22 Congress did in the TVPA. It knows how to do it, and it didn't
23 do it here. And so for the Court to interpret the 1595(d) to
24 allow that type of punitive action by a non-law enforcement
25 entity would, I think, be both improper under the TVPA, but

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1 would also be impermissibly retroactive for any conduct that
2 predates 2018.

3 On the question of compensatory damages to victims.
4 That's just flatly unavailable to a *parens patriae* plaintiff.
5 It cannot be individual damages. And Ms. Liu has said a few
6 different times that *Seneci* said, well, if that's all you're
7 seeking, then that's the problem. But whether or not that's
8 all that the US Virgin Islands is seeking, it is still
9 unavailable as a form of relief under *parens patriae*.

10 And the Court said it itself in the motion to dismiss
11 ruling, which is that the interest that allows the US Virginia
12 Islands to proceed forward here is an interest that cannot be
13 redressed by an individual plaintiff, and that's not what the
14 compensatory damages that they purport to seek here would be.

15 And again I point out as the Court has, to the extent
16 that they had some right to seek those damages, which they do
17 not, those victims have been fully compensated by the two
18 settlements.

19 THE COURT: Although theoretically, I doubt this will
20 occur, theoretically if 50 people opted out on those
21 settlements, and they were all residents of the Virgin Islands,
22 we might have an interesting issue, but I think that's an
23 unlikely scenario.

24 MS. ELLSWORTH: I think it is too, your Honor. I
25 think that is an entirely theoretical question, but the

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1 question did embed an important point, which is residents of
2 the Virgin Islands would be the only types of potential victims
3 that the US Virgin Islands might be able to seek compensatory
4 damages for.

5 Again, those damages aren't available, but even if
6 they were. And they have not articulated or identified who
7 those individuals might be.

8 But more importantly, it's both categorically
9 unavailable released by the settlement if it is ultimately
10 approved and unnecessary. Those damages have been fully
11 compensated by the settlements reached that the Court is
12 currently considering.

13 THE COURT: Okay. I want to hear both from
14 plaintiff's counsel on what we've just been discussing, but
15 also on anything else you want to raise because in a moment of
16 foolishness I scheduled another matter to follow this matter,
17 and I don't want to keep the lawyers in that matter waiting too
18 long.

19 Let me hear from plaintiff's counsel, and then we'll
20 give defense counsel a final say as well.

21 MS. LIU: Thank you, your Honor, just a few points.
22 If you look at the legislative history of 1595(d), it's clear
23 that Congress was contemplating that State Attorneys General
24 would act as civil law enforcement in this case.

25 The language in one section allege history that we

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1 cite in the briefing, We have begun to change the issue of
2 resources to go after the perpetrators of these heinous crimes
3 in a much better way by allowing State Attorneys General to
4 actually prosecute these crimes. "Prosecute" that is not a
5 word that is used, except when you are referring to the State
6 Attorneys General's law enforcement powers. We are doing
7 something in the law that says we need more prosecutes. We
8 need more investigators.

9 Again, those are terms used when Congress is intending
10 that Attorneys General are acting in their civil law
11 enforcement capacity. "Let's unleash those in the states to
12 help us address this growing problem throughout our country. A
13 problem that they previously referred to as these heinous
14 crimes."

15 Clearly the intent of Congress was to have State
16 Attorneys General, the law enforcement entities in state --

17 THE COURT: You're saying that, as to your adversary's
18 argument, that this would only apply if they were enforcing
19 state laws, that the statute on its face in effect says they
20 are enforcing federal law?

21 MS. LIU: Right. And Congress has done this numerous
22 times where they've invoked State Attorneys General *parens*
23 *patriae* authority to enforce a federal law civilly, and for
24 this precise reason, to allow more prosecutes to go after these
25 type of crimes.

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1 And in the briefing we talk about other congressional
2 enactments that protect children; for example, where Congress
3 has specifically sought the help of state law enforcement to
4 enforce and prosecute these type of heinous crimes against
5 perpetrators like JPMorgan.

6 I will also provide to you, your Honor --

7 THE COURT: And you might along the same lines say or
8 argue perhaps that this made special sense in a situation where
9 victims who are residents of a particular state or territory
10 are often, by the nature of these crimes, people who are
11 hesitant to come forward have many impediments to bearing their
12 souls so to speak; and so that it would be particularly
13 appropriate to have the state as a quasi-prosecutor through
14 civil action in those situations.

15 MS. LIU: Absolutely, Judge. And that's precisely
16 what has happened here. If you look at the statements of
17 undisputed facts, I believe it's in JPMorgan's facts, it is
18 noted by one of the parties that the EDCP identified, for
19 example, a certain number of victims that it could identify.

20 Of course it's very hard to ensure that you've
21 identified all of the victims in this kind of case,
22 particularly as you said, where Jeffrey Epstein really was able
23 to hide out on these two Islands that were miles off the shore
24 of St. Thomas.

25 But the EDCP identified a certain number of victims.

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1 And, in fact, not all those victims came forward. There may be
2 a number of absent class members who did not fall within the
3 class period whose claims are released. And that is precisely,
4 even in this particular case, the reason that state AGs are
5 here. We can get those damages for those victims, put them in
6 a fund. And if at some point years down the road those victims
7 come forward, they can still claim those funds as opposed to
8 having them released.

9 I would also note that there is a long line of cases,
10 Judge, where the situation that's happened here has happened in
11 cases involving government enforcement actions; namely, private
12 party settlements seeking to release government claims. And
13 the Third Circuit, the Eighth Circuit, the Seventh Circuit, the
14 Eleventh Circuit, have all said that is not permitted.

15 In the *Kwasny* case, 853 F.3d 87; the *Kratville* case,
16 796 F.3d 873; the *Hartigan* case, 816 F.2d, 1177. Those cases
17 say -- and I'm quoting, That private settlements cannot
18 preclude the government "From later seeking additional or more
19 full restitution or any other remedy. Private settlements
20 cannot release the claims of government."

21 Again, your Honor can determine at a later stage, if
22 there's an offset merited here. We are not arguing for double
23 recovery. But to the extent, again, there are absent class
24 members, or a jury decides that punitive damages should be
25 awarded, which are not included in the proposed settlement, why

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1 shouldn't the victims benefit from those awards? Why should
2 JPMorgan get the windfall of not having to pay those punitive
3 damages or those absent class members or those additional
4 compensatory damages that a jury decides is properly awarded to
5 the hundreds of victims at issue in this case particular case?

6 THE COURT: Okay. Thank you so much. Let me hear
7 from defense counsel.

8 MS. ELLSWORTH: Just a few things, and I'll bring that
9 last point up first. The claims the government is asserting
10 here are not the claims of victims for their own damages. What
11 the government is trying to assert here is a quasi-sovereign
12 interest in protecting the residents of the territory, so
13 nothing that would be released by the settlement should effect
14 the government's claims.

15 The government has different claims, and I think
16 that's some of what the Court and the parties have been
17 grappling with here is trying to define what in fact is the
18 government claiming, and is there any injury in fact that they
19 can claim based on that articulation.

20 As to whether the TVPA should be read to infer some
21 power for a state Attorney General to actually act as a
22 prosecutor, as an enforcing entry. Congress knows how to do
23 that explicitly.

24 When it wants to do that, it does so explicitly using
25 that language. That is not what it did in the TVPA. And I

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1 don't think that a snippet of either a floor statement or a
2 Senate report can change the plain language of the statute
3 which does not delegate any enforcement authority. It doesn't
4 amend the criminal provision of the TVPA that only the federal
5 government can enforce. It adds a civil *parens patriae* right
6 of action for State Attorneys General, and that's it.

7
8 And the last point I would make is that, the governor
9 of the Virgin Islands here has to identify what interest it is
10 that it's trying to vindicate. And it identified that interest
11 as the harm to residents from sex trafficking.

12 Now before the Court it needs to come forward with
13 some evidence that there is in fact harm in the future to
14 residents from sex trafficking, or that there is some
15 cognizable compensatory harm in the past to its residents, its
16 quasi-sovereign interest. And it's come forth with neither at
17 this last stage in the litigation, and that's what I think is
18 the important factual point for the Court to focus on.

19 THE COURT: All right. So I thank all counsel for
20 this excellent and very helpful argument. I remind everyone
21 that if the case goes forward to trial, the trial is set for
22 October 23rd, and that is a firm fixed final and unmoveable
23 date, so you need to know the results of these motions
24 substantially before that.

25 I will undertake worst case to get you my rulings on

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1 these motions by the end of September, but I'm going to try to
2 do much better than that. At least maybe I'll get you a bottom
3 line order to be followed by an opinion. Meanwhile, I'll take
4 everything under advisement, and my thanks again to the
5 excellent counsel in this case. That concludes this
6 proceeding.

7 (Adjourned)